IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8597 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DEVSI KARABHAI MARIYA

Versus

DISTRICT MAGISTRATE

Appearance:

1. Special Civil Application No. 8597 of 2002

MS SUBHADRA G PATEL for Petitioner No. 1

MR MK PATEL, AGP for Respondent No. 1-3

RULE SERVED for Respondent No. 1-3

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 07/02/2003

ORAL JUDGEMENT

#. By filing this petition, the petitioner-detenu has

challenged his detention order dated 26.6.2002. By the impugned order, the petitioner-detenu is detained in exercise of the powers under section 3(1) of the Gujarat Prevention of Antisocial Activities Act,1985 (hereinafter referred to as "the PASA" for short), as, the detaining authority found that the detenu is a "property grabber" and is required to be detained under the preventive detention, so that, he may not continue with such type of illegal activities.

#. Along with the detention order, the detenu was also served with the grounds of detention. It is alleged against the petitioner that he has prepared certain false documents in connection with certain land of Revenue Survey No.1354 and the particulars in connection with preparing false documents are described in detail in the detention order. Considering the grounds of detention, prima facie, it appears that the petitioner has indulged himself in grabbing the land in illegal manner and he has tried to create false documents. It is also found by the detaining authority that he is trying to cheat the State Government for the purpose of making money. The detaining authority also found that the petitioner has acted in a high-handed and illegal manner in the matter of grabbing the land and having been satisfied subjectively about such activities of the petitioner, the petitioner is detained by way of preventive detention. The aforesaid order is challenged in this petition.

#. At the time of hearing of this petition, it is argued by the learned advocate for the petitioner that, the petitioner through his advocate made a representation to the detaining authority on 7.8.2002 and the detaining authority received the same on 9.8.2002; however, according to the learned advocate, the detaining authority kept the aforesaid representation with him upto 16.8.2002 and on 16.8.2002 he forwarded the same to the State Government. In that view of the matter, it is submitted that since the petitioner's representation is not dealt with properly, there is a violation of the mandate of constitutional safeguard and accordingly, the petitioner is required to be released by setting aside the detention order.

#. Mr.Patel, learned AGP, in his turn, submitted that the representation of the petitioner dated 7.8.2002 was received by the District Magistrate on 9.8.2002. Mr.Patel relied upon the affidavit-in-reply filed by the District Magistrate Mr.Arunkumar. In para 12, the District Magistrate has stated as under.:

"With reference to para 14 of the petition, I say that a representation dated 7.8.2002 was received by me on 9.8.2002. 10th, 11th & 15th August, 2002 were public holidays and hence the said representation was forwarded to the State Government on 16.8.2002 and the detenu was informed accordingly through the jail authorities. Therefore, the contention raised by the detenu in this para is not tenable at law."

Reading the aforesaid affidavit-in-reply, it is clear that the said representation was not attended by the detaining authority on 12th, 13th and 14th August, 2002. In my view, this is a serious lapse, as, for three days, the representation was kept unattended and, in fact, for the aforesaid period, there is no explanation in the affidavit-in-reply. It is required to be noted that, on a serious ground of land grabbing, the petitioner is detained under the PASA and in view of the fact that the representation was not dealt with promptly, such detenu is required to be released by giving benefit of such ground. It is difficult to understand as to why there is absolutely no explanation for keeping the representation for three days. When the detenu is detained in connection with such serious allegation, it was expected from the detaining authority to dispatch such representation promptly and without waiting in such a manner in which it has been done in the instant case. When considerable material was placed before the detaining authority and when it is alleged that the petitioner has tried to defraud the Government, in my view, such type of facts are required to be taken more seriously by the detaining authority. As indicated above, the detaining authority has not explained the delay for three days in any manner and even otherwise, the reply for the purpose of explaining the delay is also not satisfactory. It is hoped that, in future, the authority will take appropriate care in order to see that the detenu, who is involved in serious cases, is not required to be released on the ground of non-complying with constitutional requirement as well as requirement of law. All the detaining authorities are expected to know that such representation is required to be dealt with forthwith or in any case appropriate explanation is required to be given for delay in deciding or dispatching such representation to the appropriate authority. In view of the fact that the delay is not explained properly, as indicated above, and, in fact, there is no explanation worth the name for three days, there is no alternative, but to set aside the detention order on the aforesaid ground.

#. In view of what is stated above, the petition is allowed. The order of detention dated 26.6.2002 is quashed and set aside. The detenu Devshi Karabhai Mariya is ordered to be set at liberty forthwith if he is not required in connection with any other case. Rule is made absolute accordingly. Direct service is permitted.

(P.B.Majmudar,J)

(pathan)